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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/518,665   | 11/07/2005  | Donald W. Kufe       | 00530-108US1        | 6843             |
| 26211 7590 01/29/2010<br>FISH & RICHARDSON P.C.<br>P.O. BOX 1022<br>MINNEAPOLIS, MN 55440-1022 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| FRAZIER, BARBARA S   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1611   |             |                      |                     |                  |
| NOTIFICATION DATE  |             | DELIVERY MODE        |                     |                  |
| 01/29/2010   |             | ELECTRONIC           |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

# **Advisory Action** **Before the Filing of an Appeal Brief**

|                                      |                                    |
|--------------------------------------|------------------------------------|
| <b>Application No.</b><br>10/518,665 | <b>Applicant(s)</b><br>KUFE ET AL. |
| <b>Examiner</b><br>BARBARA FRAZIER   | <b>Art Unit</b><br>1611            |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☒ Other: See Continuation Sheet.

/Ashwin Mehta/  
Primary Examiner, Technology Center 1600

/B. F./  
Examiner, Art Unit 1611

1.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for overcoming the rejections. In response to Applicant's arguments against the references individually (specifically, that Gambacorti does not lead one skilled in the art, and teaches away from, using STI571 to treat myocardial infarction and stroke), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In response to Applicant's arguments regarding Kumar and Kufe, it is noted that Kumar and Kufe teach that c-Abl kinase activity leads to cell death; therefore, one skilled in the art would find it obvious to try a known abl-tyrosine kinase inhibitor, such as STI571, to reduce or prevent oxidative stress associated cell death, such as in myocardial infarction or stroke. In response to Applicant's arguments regarding Fraley, it is noted that the teachings of Fraley are relied upon to show that tyrosine kinase-dependent conditions include conditions characterized by insufficient apoptosis, such as cancer and tumor growth, as well as excessive apoptosis, such as myocardial infarction and stroke. Applicant has not argued the merits of the rejections further based on Tamao or Stern separately; accordingly, these rejections are also maintained for reasons of record.

Continuation of 13. Other: In response to Applicant's arguments regarding withdrawal of finality of the Office Action, it is noted that the previous amendments to claim 1 do not incorporate the limitations of claim 18, but rather change the scope of the claim from a method for reducing or preventing oxidative stress associated cell death (previous claim 1) in an individual diagnosed as having had a myocardial infarction or stroke (previous claim 18) to a method of treating a myocardial infarction (new claim 1) or a method of treating a stroke (claim 18); therefore Applicant's amendments necessitated the new grounds of rejection, and the finality of the Office action is maintained.